

13-151264

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

HANNAH MCNEIL, Individually, as Surviving
Spouse of DELMER MCNEIL, JR. and as next
friend of D. MCNEILL, III; .D. MCNEILL, III by
and through his mother and next friend,
HANNAH MCNEIL; and HANNAH MCNEIL,
Administrator of the Estate of DELMER
MCNEIL, JR.

Plaintiffs,

v

LG SOURCING, INC.; LOWE'S HOME
CENTERS, INC.; LOWE'S OF DYERSBURG,
TENNESSEE, #1731; LUCAS INNOVATION,
INC.; FERRELLGAS, L.P. (as FERRELLGAS,
L.P. and d/b/a FERRELLGAS OPERATING,
L.P. and d/b/a BLUE RHINO); FERRELLGAS
OPERATING, L.P., and BLUE RHINO

Defendants.

Civil Action No.
Jury Demanded

NOTICE OF REMOVAL

Defendant, **Lowe's Home Centers, Inc.** and **L.G. Sourcing, Inc.** by and through counsel hereby petitions and files this Notice of Removal pursuant to 28 U.S.C. § 1441(a) of the action pending in the Circuit Court of Dyer County, Tennessee styled *Hannah McNeil, Individually, as Surviving Spouse of Delmer McNeil, Jr. and as next friend of D. McNeill, III; D. McNeill, III by and through his mother and next friend, Hannah McNeil; and Hannah McNeil, Administrator of the Estate of Delmer McNeil, Jr. v LG Sourcing, Inc.; Lowe's Home Centers, Inc.; Lowe's of Dyersburg, Tennessee, #1731; Lucas Innovation, Inc.; Ferrellgas, L.P. (as Ferrellgas, L.P. and d/b/a Ferrellgas Operating, L.P. and d/b/a Blue Rhino); Ferrellgas Operating, L.P., and Blue Rhino* on the

general docket of said Court to the United States District Court for the Western District of Tennessee, Eastern Division at Jackson. Attached hereto as **Exhibit A** is a copy of the Notice of Filing Notice of Removal and copies of process, pleadings, and other materials believed to be on file in the office of the Circuit Clerk of Dyer County, Tennessee.

The above entitled suit was filed in the Circuit Court of Dyer County, Tennessee on or about November 9, 2012. This suit is of a civil nature of which the District Courts of the United States have original jurisdiction pursuant to 28 U.S.C. §1332 (a) (1) and is one which can be removed to this Court pursuant to the provisions of 28 U.S.C. §1441. This is a civil action in which the Plaintiffs allege that the amount in controversy is in excess of the sum of \$100,000.00 exclusive of interest and costs and is an action between citizens of different states and citizens or subjects of foreign states.

As alleged in Plaintiff's Complaint, Plaintiffs are residents and citizens of the State of Tennessee. Defendant, Lowe's Home Centers, Inc., is a North Carolina corporation with its principal place of business and office in North Carolina. Defendant, LG Sourcing is a North Carolina corporation with its principal place of business in North Carolina. Defendant, Lucas Innovation, Inc. is believed to be a corporation formed and existing under the laws of Taiwan with its principal place of business in the People's Republic of China or Taiwan. Defendant, Ferrellgas, L.P. and Ferrellgas Operating, L.P. d/b/a Blue Rhino, is a limited partnership or partnerships formed and existing under the laws of the State of Delaware with its (or their) principal place of business in the State of Missouri.

The alleged Defendant, "Lowe's of Dyersburg, Tennessee, #1731" is not a legal entity capable of being sued and therefore has neither citizenship nor residency in any state for the purposes of 28 U.S.C. § 1332 and further must be disregarded for removal purposes under 28 U.S.C. § 1441(b)(1).

The real controversy in this suit is, and at the time of commencement thereof was, and at all times since, has been a controversy between citizens of different states and citizens or subjects of foreign states. As alleged in Plaintiff's Complaint, the matter in controversy exceeds \$75,000.00 exclusive of interest and costs. Thus, diversity of citizenship exists between the Plaintiffs and Defendants. Accordingly, this Court has subject matter jurisdiction over this matter.

Pursuant to 28 U.S.C. § 1446(b)(2)(A) all defendants joined and served consent (or join in) in the removal of this action as evidenced by the Certificate of Consultation attached hereto as **Exhibit B**. Defendant, Lucas Innovation, Inc. has not yet been served and therefore consent from it is not required under 28 U.S.C. § 1446(b)(2)(A).

WHEREFORE, the Defendant, Lowe's Home Centers, Inc. and L.G. Sourcing, Inc., request that the above named action now pending against it in the Circuit Court of Dyer County, Tennessee be removed therefrom to this Court.

By: s/John S. Little
John S. Little, (#014941)
WALDROP & HALL, P.A.
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CERTIFICATE OF SERVICE

This is to certify that I served a copy of the foregoing pleading has been filed electronically, notice of which is provided through ECF system and has also been mailed via USPS, postage prepaid upon each attorney or firm of attorneys appearing of record for each adverse party or each *pro se* party on or before the filing date thereof.

DATE: This the 7 day of January, 2013.

WALDROP & HALL, P.A.

By: s/John S. Little